

David McDonald

v.

Town of Northfield

Docket No.: 13143-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$138,700 (land \$23,300; buildings \$115,400) on a 20,910 square-foot lot with a house, a converted garage with two apartments, and a trailer (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased at foreclosure auction in January 1992 for \$28,000;
- (2) the Town's methodology was flawed because the house was valued separately when it is really part of a multi-unit property;
- (3) the Town's income figures were far in excess of the actual rents;

- (4) a realtor estimated a \$65,000 to \$72,000 "competitive price range" for June 1993;
- (5) in April 1992, the units had several problems that were listed for the board; and
- (6) the Property was worth \$60,000 to \$90,000.

The Town argued the assessment was proper because:

- (1) the Town reviewed the Property and the assessments and made corrections;
- (2) the Taxpayer's realtor's analysis was for a year after the assessment date and the realtor used two bank sales, which were not in the ratio study; and
- (3) the Taxpayer did not show overassessment.

BOARD'S RULINGS

Based on the evidence, we find the correct assessment should be \$112,000.

At the hearing and in the documents filed subsequent to the hearing, three general issues were raised:

- 1) is the Taxpayer limited to the arguments raised in his appeal document;
- 2) what tax years does the board's decision cover; and
- 3) what is the proper assessed value for the Property.

Limitation of Arguments

The Town argued in their submission of December 20, 1995 that the Taxpayer should be limited to argue only the reasons listed on the appeal document filed with the board. The Town argued that because the condition of

the Property was not listed as a reason for appeal, the board should not consider the

Taxpayer's arguments made relative to the condition. The Town cites the board's rule TAX 203.03(g), which reads as follows:

(g) Grounds Limited. Throughout the appeal, the Taxpayer shall be limited to the grounds stated in the Appeal Document. The Board, on its own or by Municipality's motion, shall limit the Taxpayer's presentation to the issues raised in the appeal. Concurrent specificity between the Abatement Application and the Appeal Document is not required, but the grounds stated in the Appeal Document control the issues before the Board.

The board's new rules, which include TAX 203.03(g), were adopted on September 1, 1993. For the provisions of those rules to have effect, the procedural event in question must have occurred subsequent to September 1, 1993. In this case, the event would be the filing of the Taxpayer's appeal document with the board. The Taxpayer filed their appeal on June 29, 1993, prior to the enactment of TAX 203.03(g). Therefore, the provisions of that rule do not control the Taxpayer in this case and the condition of the Property can be considered. See Appeal of Town of Newmarket, ___ N.H. ___ (October 6, 1995).

Tax Years Covered by Decision

The Taxpayer filed an appeal for only the 1992 tax year. The board rules that this decision applies only to the 1992 assessment and not to subsequent year assessments because:

1) the Town performed an extensive assessment update in 1993, which is akin to a good-faith adjustment under TAX 203.05(c)(3)c. "Adjustments to property strata after analysis of sales and assessment data." Because the Town performed a town-wide assessment update in 1993, the Taxpayer's assessment would have been different in 1993 than in 1992 regardless of any ongoing physical improvements done to the Property; and

2) the Taxpayer made physical improvements in 1993 and 1994, including

repairs to the rental units and the construction of an addition and garage to the house; these physical changes to the Property could result in a good-faith reason under TAX 203.05 for the Town to revise the assessment and, thus, requires the Taxpayer to file a subsequent appeal if in disagreement with the subsequent assessments.

1992 Assessment

Based on a review of the testimony, evidence and photographs submitted relative to the physical condition of the Property as of April 1, 1992, the board agrees with the Town's proposed assessment of \$112,000.

The board during its deliberations revised the physical and functional depreciations of the mobile home and two rental units to reflect the deferred maintenance and damages that existed at that point in time. The board's resulting value for those buildings was similar and actually exceeded the Town's proposed revisions to the assessment.

Similarly, the board reviewed the photographs and description of the main house and finds the Town's depreciated assessed value reasonably reflects the condition of the house at that time.

While there were improvements needed to be done to all the structures on the Property on April 1, 1992, the Property had the potential for rental income and the present use and enjoyment of the house at that time. No market evidence was submitted by the Taxpayer (other than the auction purchase of the Property, which the board finds is not reflective of market value) to support a lower finding of value.

If the 1992 taxes have been paid, the amount paid on the value in excess of \$112,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Suldenski, Agent for David McDonald, Taxpayer; and Chairman, Selectmen of Northfield.

Dated: January 11, 1996

Valerie B. Lanigan, Clerk